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**SENATE BILL 74**

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

**INTRODUCED BY**

**Leonard Lee Rawson**

**AN ACT**

**RELATING TO WORKERS' COMPENSATION; INCREASING THE ASSESSMENT ON EMPLOYERS; DISTRIBUTING A PORTION OF THE EMPLOYER ASSESSMENT TO THE UNINSURED EMPLOYERS' FUND; AMENDING SECTIONS OF THE NMSA 1978.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 52-1-9.1 NMSA 1978 (being Laws 2003, Chapter 258, Section 1) is amended to read:**

**"52-1-9.1. UNINSURED EMPLOYERS' FUND- -WORKERS' COMPENSATION ADMINISTRATION- -ADDITIONAL DUTIES. - -**

**A. The "uninsured employers' fund" is created in the state treasury. The fund shall be administered by the workers' compensation administration as a separate account. The administration shall adopt rules to administer the fund pursuant to the provisions of this section.**

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1           B. The fund shall consist of ~~[uninsured employers'~~  
2 ~~fees pursuant to this section]~~ thirty cents (\$.30) per employee  
3 covered by the Workers' Compensation Act on the last working  
4 day of each quarter for the fee assessed against employers  
5 pursuant to Section 52-5-19 NMSA 1978 and all income derived  
6 from investment of the fund. ~~[Each New Mexico employer or his~~  
7 ~~insurance carrier shall quarterly pay an uninsured employers'~~  
8 ~~fee to the workers' compensation administration amounting to a~~  
9 ~~percentage established by the administration, not to exceed one~~  
10 ~~percent, of the money paid out during that quarter as~~  
11 ~~compensation benefits and medical benefits, exclusive of~~  
12 ~~attorney fees and related benefits.]~~ The fund shall also  
13 consist of any other money appropriated, distributed or  
14 otherwise allocated to the fund for the purpose of this  
15 section.

16           ~~[C. The workers' compensation administration shall~~  
17 ~~adopt rules for the assessment of the uninsured employers'~~  
18 ~~fees. The rate shall be determined once before the end of each~~  
19 ~~fiscal year by the workers' compensation administration so as~~  
20 ~~to provide a sufficient income to meet payments from the fund~~  
21 ~~for the next fiscal year; provided that for the first fiscal~~  
22 ~~year the percentage shall be one-half percent. The uninsured~~  
23 ~~employers' fees shall be collected and deposited to the credit~~  
24 ~~of the uninsured employers' fund by the taxation and revenue~~  
25 ~~department in the same manner as for the workers' compensation~~

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1 ~~administration fund created pursuant to Section 52-5-19 NMSA~~  
2 ~~1978.~~

3 ~~D.]~~ C. Money in the fund is appropriated to the  
4 workers' compensation administration to pay ~~[workers]~~ workers'  
5 compensation benefits to a person entitled to the benefits when  
6 that person's employer has failed to maintain workers'  
7 compensation coverage because of fraud, misconduct or other  
8 failure to insure or otherwise make compensation payments. For  
9 purposes of this subsection, a worker who has affirmatively  
10 elected not to accept the provisions of the Workers'  
11 Compensation Act shall not be eligible for payment of workers'  
12 compensation from the uninsured employers' fund. The director  
13 may pay reasonable costs of administering the uninsured  
14 employers' fund from the fund, but money in the fund shall not  
15 be used for administrative costs unrelated to the fund or any  
16 activity of the workers' compensation administration other than  
17 as provided in this section. The superintendent of insurance  
18 shall examine and audit the fund pursuant to the provisions of  
19 Chapter 59A, Article 4 NMSA 1978.

20 ~~[E.]~~ D. The director may authorize payments to a  
21 person from the uninsured employers' fund if the injury or  
22 cause of incapacity occurs in New Mexico and would be  
23 compensable under the Workers' Compensation Act.

24 ~~[F.]~~ E. The uninsured employers' fund, by  
25 subrogation, has all the rights, powers and benefits of the

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1 employee or the employee's dependents against the employer  
2 failing to make the compensation payments.

3 ~~[G.]~~ F. The uninsured employers' fund, subject to  
4 approval of the director, shall discharge its obligations by  
5 contracting with an independent adjusting company that is  
6 licensed and principally located in New Mexico as prescribed by  
7 Section 59A-13-11 NMSA 1978 or Chapter 59A, Article 12A NMSA  
8 1978.

9 ~~[H.]~~ G. For the purpose of ensuring the health,  
10 safety and welfare of the public, the director or a workers'  
11 compensation judge shall:

12 (1) order the uninsured employer to reimburse  
13 the uninsured employers' fund for all benefits paid to or on  
14 behalf of an injured employee by the uninsured employers' fund  
15 along with interest, costs and ~~[attorneys]~~ attorney fees; and

16 (2) impose a penalty against the uninsured  
17 employer of not less than fifteen percent nor more than fifty  
18 percent of the value of the total award in connection with the  
19 claim that shall be paid into the uninsured employers' fund.

20 ~~[I.]~~ H. The liability of the state, the workers'  
21 compensation administration and the state treasurer, with  
22 respect to payment of any compensation benefits, expenses, fees  
23 or disbursement properly chargeable against the uninsured  
24 employers' fund, is limited to the assets in the uninsured  
25 employers' fund, and they are not otherwise liable for any

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1 payment.

2 [J-] I. The uninsured employers' fund shall be  
3 considered a payor of last resort within the workers'  
4 compensation system. No other payor liable for payments under  
5 the Workers' Compensation Act shall have its liabilities  
6 affected or discharged by payments from the uninsured  
7 employers' fund. Any payments to workers paid by the uninsured  
8 employers' fund shall be subject to subrogation and  
9 apportionment to the same extent as payments to an injured  
10 worker from a third party tortfeasor.

11 [K-] J. In any claim against an employer by the  
12 uninsured employers' fund, or by or on behalf of the employee  
13 to whom or to whose dependents compensation and other benefits  
14 are paid or payable from the uninsured employers' fund, the  
15 burden of proof is on the employer or other party in interest  
16 objecting to the claim. The claim is presumed to be valid up  
17 to the full amount of workers' compensation benefits paid to  
18 the employee or the employee's dependents. This subsection  
19 applies whether the claim is filed in court or in an  
20 adjudicative proceeding under the authority of the workers'  
21 compensation administration.

22 [L-] K. Nothing in this section shall be construed  
23 to extend exclusive remedy protection pursuant to Section  
24 52-1-6 or 52-1-9 NMSA 1978 to any employer whose injured worker  
25 is paid by the uninsured employers' fund.

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1           ~~[M-]~~ L. Nothing in this section shall be construed  
2 to supersede Section 52-5-10 NMSA 1978. "

3           Section 2. Section 52-5-19 NMSA 1978 (being Laws 1987,  
4 Chapter 235, Section 52, as amended) is amended to read:

5           "52-5-19. FEE FOR FUNDING ADMINISTRATION--WORKERS'  
6 COMPENSATION ADMINISTRATION FUND CREATED. --

7           A. Beginning with the calendar quarter ending [~~June~~  
8 ~~30, 1992~~] September 30, 2004 and for each calendar quarter  
9 thereafter, there is assessed against each employer who is  
10 required or elects to be covered by the Workers' Compensation  
11 Act a fee equal to [~~two dollars (\$2.00)~~] two dollars thirty  
12 cents (\$2.30) multiplied by the number of employees covered by  
13 the Workers' Compensation Act that the employer has on the last  
14 working day of each quarter. At the same time, there is  
15 assessed against each employee covered by the Workers'  
16 Compensation Act on the last working day of each quarter a fee  
17 of two dollars (\$2.00), which shall be deducted from the wages  
18 of the employee by the employer and remitted along with the fee  
19 assessed on the employer. The fees shall be remitted by the  
20 last day of the month following the end of the quarter for  
21 which they are due.

22           ~~[B. The taxation and revenue department may deduct~~  
23 ~~from the gross fees collected an amount not to exceed five~~  
24 ~~percent of the gross fees collected to reimburse the department~~  
25 ~~for costs of administration.~~

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1                   ~~C. The department shall pay over the net fees~~  
2 ~~collected to the state treasurer to be deposited by him in a~~  
3 ~~fund hereby created and to be known as the "workers'~~  
4 ~~compensation administration fund". Expenditures shall be made~~  
5 ~~from this fund on vouchers signed by the director for the~~  
6 ~~necessary expenses of the workers' compensation~~  
7 ~~administration.]~~

8                   B. The "workers' compensation administration  
9 fund" is created in the state treasury. The workers'  
10 compensation administration shall administer the fund.  
11 Expenditures shall be made from the fund on warrants issued by  
12 the secretary of finance and administration upon vouchers  
13 signed by the director. The fund shall be comprised of money  
14 distributed to it pursuant to the provisions of Subsection C of  
15 this section. The money in the fund shall not revert at the  
16 end of any fiscal year but shall remain in the fund and is  
17 appropriated for expenditure by the workers' compensation  
18 administration in subsequent fiscal years.

19                   C. The workers' compensation administration shall  
20 collect the fees assessed in Subsection A of this section and  
21 pay them over to the state treasurer for deposit in the  
22 following manner:

23                   (1) thirty cents (\$.30) per employee of the  
24 fee assessed against an employer shall be distributed by the  
25 state treasurer to the credit of the uninsured employers' fund;

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and

(2) the net fees remaining after the distribution made in Paragraph (1) of this subsection shall be distributed by the state treasurer to the credit of the workers' compensation administration fund.

D. The workers' compensation fee authorized in this section shall be administered and enforced by the [~~taxation and revenue department under the provisions of the Tax Administration Act~~] workers' compensation administration pursuant to rules adopted by the workers' compensation administration. "

Section 3. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 2004.